

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

**CARDUCO, INC. D/B/A CARDENAS
METROPLEX,**

PLAINTIFF,

VS.

**MERCEDES-BENZ, USA, LLC,
JACK L. HOLT, CRAIG W. DEARING,
and FRANK J. OSWALD, JR.,
DEFENDANTS.**

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CIVIL ACTION NO.

B-11-CV-144

**DEFENDANTS' UNOPPOSED MOTION FOR LEAVE TO FILE
AMENDED NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE:

Defendants Mercedes-Benz USA, LLC, Jack L. Holt, Craig W. Dearing and Frank J. Oswald, Jr. (collectively, "Defendants") file this Unopposed Motion for Leave to File an Amended Notice of Removal. Defendants state as follows:

1. On July 20, 2011, Defendants filed its Notice of Removal, removing the above-styled case to this Court. On August 2, 2011, Plaintiff filed a motion to remand, arguing in part that Defendants' Notice of Removal was defective because Defendants failed to allege the citizenship of each of the members of Mercedes-Benz USA, LLC.
2. Defendants respectfully request leave to file an Amended Notice of Removal, which is attached hereto, to provide the Court with the citizenship of each of the members of Mercedes-Benz USA, LLC, and to state Defendant Holt's citizenship rather than residence.
3. The Court has the authority and discretion to grant leave to amend to cure allegations of jurisdiction. See 28 U.S.C. § 1653 ("Defective allegations of jurisdiction

may be amended, upon terms, in the trial or appellate courts.”); *see also Menendez v. Wal-Mart Stores, Inc.*, 364 Fed. Appx. 62, 66 (5th Cir. 2010) (“In granting the defendants leave to amend their removal notice, the district court relied on 28 U.S.C. § 1653, which grants courts the authority and discretion to allow parties to cure defective allegations of jurisdiction. The district court correctly observed that § 1653 should be liberally construed to allow a party to cure technical defects, including the failure to specifically allege the citizenship of the parties.”).

4. Plaintiff has notified Defendant that it does not oppose amending the Notice for the limited purpose of alleging the citizenship of Defendant Holt and the members of Mercedes-Benz USA, LLC.

CONCLUSION

Defendants respectfully request that the Court grant leave to file Defendants’ Amended Notice of Removal, attached hereto, to specifically allege the citizenship of Defendant Holt and each of the members of Mercedes-Benz USA, LLC.

Respectfully submitted,

/s/ Erin A. Hudson
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CERTIFICATE OF CONFERENCE

Pursuant to LR7.1 (D), undersigned counsel has conferred with Plaintiff regarding the relief sought in this motion. Plaintiff does not oppose the motion.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been forwarded to the following counsel of record via certified mail, return receipt requested, on this the 19th day of August, 2011:

Peter D. Marketos
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/s/ Erin A. Hudson